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February 1, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing  
Date of Filing: April 11, 2006  
Case Number: TSO-0374

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored.

**I. APPLICABLE REGULATIONS**

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In assessing derogatory information, the DOE considers various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

## **II. BACKGROUND**

The Individual has been employed by a contractor at a DOE facility in a position which requires him to have an access authorization. During the course of a Local Security Office's (LSO) background reinvestigation of the Individual, the LSO discovered derogatory information concerning the Individual's alcohol use. The LSO subsequently arranged for the Individual to be examined by a DOE-contractor psychiatrist (DOE Psychiatrist) in August 2002. The DOE Psychiatrist then issued a written evaluative report (2002 Report) concerning the Individual. The Individual's security clearance was suspended in 2003. The LSO requested another evaluation by the DOE Psychiatrist in June 2005.<sup>1</sup> The DOE Psychiatrist thereafter issued another evaluative report (2005 Report) on the Individual.

In February 2006, the LSO informed the Individual that his history of alcohol-related incidents and the DOE Psychiatrist's evaluative reports constituted derogatory information that created a substantial doubt as to his continued eligibility for a security clearance under 10 C.F.R. § 710.8(h) (Criterion H) and 710.8(j) (Criterion J). February 2006 Letter from Manager, Personnel Security Division, to Individual (Notification Letter). The Notification Letter also cited as derogatory information under 10 C.F.R. § 710.8(f) (Criterion F) the Individual's failure to list an alcohol-related arrest in a August 1990 Questionnaire for Sensitive Position (QSP) and the Individual's inconsistent answers to the DOE Psychiatrist and a Personnel Security Specialist regarding his alcohol use.

The Individual was also informed in the Notification Letter that there was unresolved derogatory information under 10 C.F.R. § 710.8(l) (Criterion L). This information related to a 1994 automobile accident, his arrest for Leaving the Scene of an Accident and his providing false information to an OPM investigator concerning the incident. The Individual is also alleged to have provided false testimony in a subsequent court hearing regarding the accident.

A hearing was held in this matter. At the hearing, DOE presented one witness, the DOE Psychiatrist. The Individual offered his own testimony, as well as that of his wife, three co-workers and a supervisor.

## **III. ANALYSIS**

### **A. Finding of Fact**

The facts in this case are essentially not in dispute. The brief summary provided below is drawn from the record in this matter.

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<sup>1</sup> There is no reason in the record regarding the delay that necessitated the second evaluation by the DOE Psychiatrist.

On July 20, 1990, the Individual was arrested for Driving While Intoxicated (DWI) and possessing an open container of alcohol in a motor vehicle. DOE Exhibit (Ex.) 8 at 16-20; Ex. 17.<sup>2</sup> Subsequently, the Individual submitted a completed QSP dated August 2, 1990 whereby he answered “No” to the question: “Have you ever been arrested, charged or convicted of any offenses related to alcohol or drugs?” Ex. 10 at 7 (Question 23d).

In December 1994, the Individual was driving while intoxicated and was involved in an automobile accident. Ex. 7 at 23; *see also* Transcript of Hearing (Tr.) at 104. He immediately left the scene of the accident supposedly to get help. Ex. 7 at 12. Subsequently, the Individual admitted that he fled the scene of the accident because of his concerns about his clearance and the fact he might have received a citation for Driving While Intoxicated had he stayed at the accident site. Ex. 5 at 24-25; Ex. 7 at 16-18. He later returned to the accident scene to find that the accident had been removed. Ex. 7 at 13. The Individual notified his insurance company that his automobile had been stolen. Ex. 5 at 24; Ex. 7 at 16-18. The next day, he was notified that he was being charged by the local police department with Leaving the Scene of an Accident. Ex. 7 at 13. The Individual admitted reporting to an OPM investigator in 1995, pursuant to a background investigation, that his car had been stolen and that he had not been present at the accident. Ex. 7 at 16-17. At a subsequent court hearing in 1997 concerning the accident, the Individual falsely testified under oath that he had not been at the accident and that his car had been stolen. Ex. 5 at 24; Tr. at 114-15. During a 2001 background investigation, the Individual admitted to an OPM investigator that he in fact had been involved in the 1994 automobile accident. Ex. 15 at 6; Ex. 17 at 3.

The LSO requested that the Individual undergo a psychiatric examination by the DOE Psychiatrist in 2002. Before this examination, the Individual stated in a Personnel Security Interview in March 2002 that his current use of alcohol was “three or four beers” a week. Ex. 7 at 26. The Individual subsequently told the DOE Psychiatrist in the August 2002 examination that he consumed alcohol on a daily basis and that in the past year he had consumed “six to eight beers” a week. Ex. 5 at 24.

Later in August 2002, the DOE Psychiatrist issued an evaluative report (2002 Report). In the 2002 Report, the DOE Psychiatrist opined that the Individual was a user of alcohol habitually to excess and that the Individual could be properly diagnosed as suffering from alcohol abuse from 1984 to 1990. Ex. 5 at 28. While the DOE Psychiatrist believed that the Individual’s alcohol abuse then was in “quiescent” period, he believed that it was more likely than not that there would be a recurrence of alcohol abuse. Ex. 5 at 31. The DOE Psychiatrist recommended that in order to demonstrate rehabilitation, the Individual would have to complete one of several suggested alcohol treatment programs and not have any alcohol-related problems for two years if he chose to continue to consume alcohol. If the Individual elected to stop consuming alcohol during the recommended treatment programs, the Individual would have had to demonstrate abstinence for one year. Ex. 5 at 28-29. To demonstrate reformation, the Individual would have

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<sup>2</sup> The DWI charge was ultimately dropped. Ex. 8 at 20. However, in a 1992 Personnel Security Interview describing the incident the Individual stated “I must have had one too many . . .” Ex. 8 at 18.

to complete one of the treatment plans recommended for rehabilitation or, in the alternative, if the Individual did not elect to participate in one of the treatment programs, stop consuming alcohol for a period of three years. If the Individual elected to continue consuming alcohol, the Individual would have to complete a five-year period without any alcohol-related problems. Ex. 5 at 29.

The DOE requested another evaluation of the Individual in June of 2005. In his 2005 Report the DOE Psychiatrist again opined that the Individual used alcohol habitually to excess and now could be diagnosed as suffering from alcohol abuse. Ex. 3 at 11. The DOE Psychiatrist recommended that to demonstrate rehabilitation, the Individual would have to participate in an Alcoholics Anonymous program for a minimum of 100 hours over a period of a year and be abstinent for two years, or complete a professionally run alcohol treatment program for a period of six months and be abstinent for three years. Ex. 3 at 12. To demonstrate reformation, the Individual would have to complete one of the treatment programs outlined above along with various periods of abstinence specified for each program. Alternatively, if the Individual elected not to participate in one of the treatment programs, the Individual would have to demonstrate a period of abstinence of five years. Ex. 5 at 12.

### **B. Criteria H and J Concerns**

The derogatory information concerning Criteria H and J centers on the Individual's alcohol problem. Criterion H concerns conduct tending to show that the Individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J concerns conduct indicating that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

An individual with a security clearance who suffers from an alcohol problem raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243*, 27 DOE ¶ 82,808 (1999). An individual that uses alcohol excessively or abusively could willingly or unwillingly disclose classified information or compromise secret nuclear materials. *See, e.g., Personnel Security Hearing, Case No. VSO-0359*, 28 DOE ¶ 82,768 (2000). At the hearing, the Individual attempted to demonstrate mitigation of the security concerns raised by his misuse of alcohol through his current period of abstinence since May 2005.

The DOE Psychiatrist testified as to his two examinations of the Individual and reiterated his opinion that the Individual had used alcohol habitually to excess in the past and suffered from alcohol abuse as of the time of his examination of the Individual in 2005. Tr. at 12-17. He noted that at the time of his examination of the Individual in 2005, the Individual was consuming approximately the same amount of alcohol as in 2002. Tr. at 20. During the 2005 examination, the Individual had informed the DOE Psychiatrist that he had become intoxicated four or five

times in the past year. Tr. at 19. The DOE Psychiatrist believed that intoxication four or five times a year would support a finding that a person used alcohol habitually to excess. Tr. at 20. With regard to his diagnosis of alcohol abuse in 2005, the DOE Psychiatrist noted that the Individual had failed to meet major role obligations due to the suspending of the Individual's clearance for excessive alcohol consumption in 2002 especially in light of the Individual's subsequent failure to address his alcohol problem.<sup>3</sup> Tr. at 17-19. The DOE Psychiatrist's recommendations for treatment in his 2005 Report were based on partially on the fact that the Individual continued to consume alcohol despite having his clearance suspended in 2002. Tr. at 27.

The Individual has testified that he has deliberately stopped consuming alcohol, with one exception, since the latter part of May 2005. Tr. at 92. The Individual testified that he did use alcohol one time since then, in October 2005. Tr. at 118. The Individual has not sought any type of treatment program because he did not feel a need to use such a program. The Individual believed he could stop consuming alcohol using self-discipline. Tr. at 93. He testified that he was not motivated to stop consuming alcohol after his 2002 interview with the DOE Psychiatrist because he was not notified after the interview that there was a problem with his security clearance due to alcohol consumption. Tr. at 95-96.

The Individual's wife testified that the Individual had quit drinking alcohol over a year prior to the date of this hearing (July 2006). Tr. at 65. She has never observed her husband as being intoxicated during the period of time he was consuming alcohol. Tr. at 65. However, she did believe that that the Individual was "drinking a little bit too much" during that period. Tr. at 71. She also has noticed a significant difference in the Individual's behavior since he has stopped consuming alcohol. In her opinion, the Individual is happier and spends more time with their family. Tr. at 70.

Two coworkers testified that that they had never seen the Individual intoxicated or consuming alcoholic beverages. Tr. at 48; Tr. at 58, 61. A third co-worker testified that she first worked with the Individual approximately ten years ago and had socialized with him approximately seven or eight times a year. Tr. at 80, 83. She had never seen the Individual drinking alcohol excessively. Tr. at 81. Further, from the date the Individual made the decision to stop consuming alcohol, she has never observed him consuming an alcoholic beverage. Tr. at 84. The Individual's supervisor testified that he had never seen the Individual intoxicated on the job. Tr. at 125.

The Individual has also submitted a letter from his personal physician concerning the Individual's alcohol use. Individual Exhibit (Ind. Ex.) 1. The personal physician states that the Individual has become more aware of the potential problems concerning his alcohol intake and has "severely limited his alcohol intake." His personal physician believes that the Individual has

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<sup>3</sup> The DOE Psychiatrist noted that a failure to fulfill a major obligation due to excessive alcohol consumption would be consistent with one of the criteria (A1) for diagnosing alcohol abuse in the Diagnostic and Statistical Manual 4<sup>th</sup> Edition – Text Revision. Tr. at 17.

probably consumed “two beers in the last two years.” Ind. Ex. 1 at 1. He also believes that the Individual’s failure to be fully aware of the potential problems arising from his alcohol consumption may be related in part to the Individual’s “cultural perspective,” but that now the Individual knows that he should not ever consume alcohol again. Ind. Ex. 1 at 1. He states that he believes there is “little risk” that the Individual will consume alcohol in the future. Ind. Ex. 1 at 1.

After considering all of the evidence presented in this matter, I find that the Individual has not presented sufficient evidence to mitigate the derogatory evidence concerning his past alcohol consumption. There seems to be little doubt that the Individual has an alcohol problem of significant duration. The Individual had two alcohol-related traffic citations in the 1990’s and admitted to the DOE Psychiatrist in 2005 that he became intoxicated four or five times a year. As such, I find that the Individual has been a user of alcohol habitually to excess.

The Individual has sought to present evidence indicating that he is now reformed. The record indicates that the Individual stopped consuming alcoholic beverages beginning in May 2005 (with the exception of one occasion in October 2005). However, as of the date of the hearing the Individual had demonstrated only nine months of abstinence. *See* Tr. at 130. Significantly, the Individual has not undertaken any type of formal treatment program nor does the Individual seem to fully accept that he has a problem with alcohol. The Individual’s physician’s letter, while expressing an general opinion that the risk of the Individual relapsing into future alcohol consumption is low, is not very specific or detailed and does not outweigh the expert testimony provided at the hearing.

I believe that the Individual has made significant efforts to resolve his alcohol problem. Nevertheless, given the fact he has not undertaken a formal treatment program and the relatively limited period of abstinence he has achieved, I do not find that the Individual has presented sufficient evidence to resolve the concerns raised by his alcohol problem.<sup>4</sup>

### **C. Criterion L Concerns**

The Criterion L concerns are based on the Individual’s failure to accurately report the nature of his automobile accident to the local police and an OPM investigator, and his subsequent failure to testify honestly at a civil hearing. Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the

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<sup>4</sup> The Individual testified at the hearing that he was never given a copy of the DOE Psychiatrist’s 2002 Report and thus he could not have been aware of the concern with his alcohol consumption. Tr. at 30-36, 95-96; *but see* Tr. at 36 (Individual testifies that he had a suspicion that suspension of his clearance was related to the 2002 examination by DOE Psychiatrist). Thus, the Individual implicitly suggests that he could have demonstrated a longer period of abstinence at the time of this hearing. The DOE Counsel presented testimony from the DOE Psychiatrist as to why it would not have been reasonable for the Individual to believe that the LSO was not concerned about his alcohol use. Tr. at 35-36. While not making a finding on this issue, I note that have not drawn any negative inference against the Individual regarding this issue.

Individual to act contrary to the best interests of national security.” 10 C.F.R. § 710.8(l). From a security standpoint, an individual’s failure to report an incident truthfully raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff’d*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000).

The record above indicates that the Individual provided false information concerning the 1994 accident from 1994 to 2001. During this period, the Individual made a deliberate decision to give false testimony under oath in a court proceeding. The Individual’s conduct was motivated in part by fearing the loss of his clearance. Tr. at 115. In mitigation, the Individual has provided testimony from witnesses affirming his honesty and reliability. Tr. at 49-50, 58-59, 84-85. The Individual admits that his falsifications concerning the accident were a “huge mistake” and has admitted responsibility for his falsifications. Tr. at 115. Because of his knowledge and experience, the Individual believes he would never again make such a error in judgment. Tr. at 105, 117. The Individual also points out that he has been involved with volunteer community service work involving water distribution and trash cleanup for six years. Tr. at 109-110.

I am aware of no additional evidence that the Individual has had any additional incidents of dishonesty in approximately the past five years. The Individual’s efforts at community service are commendable. Nevertheless, I do not find that the Individual has presented sufficient evidence to mitigate the Criterion L concerns. The extensive time, some seven years, that the Individual maintained the falsehood concerning the accident and the fact that the Individual would deliberately lie under oath to avoid endangering his clearance outweigh the recent five year period where he has shown honesty and reliability. Consequently, the Criterion L concerns have not been resolved.

#### **D. Criterion F**

The LSO cited a Criterion F concern based on the Individual’s apparent failure to disclose an alcohol-related arrest in the 1990 QSP and the inconsistent answers given to the DOE Psychiatrist and a Personnel Security Specialist concerning his alcohol use. Criterion F describes a concern raised when a person has “[d]eliberately misrepresented, falsified, or omitted significant information from . . . a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . .” 10 C.F.R. § 710.8(f). The deliberate withholding of significant information raises serious issues with regard to the individual’s honesty, reliability and trustworthiness. As discussed above, the DOE security program is based on trust, and when a security clearance holder breaches that trust by misrepresenting, falsifying or omitting information, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing*, Case No. TSO-0361, slip op. at 7

(October 6, 2006); *Personnel Security Hearing*, Case No. VSO-0281, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000).

With regard to the disparate descriptions of his alcohol use the Individual gave the DOE Psychiatrist and the Personnel Security Specialist during the 2002 PSI, I find that this falsification was *de minimus* in nature (consumption of four beers per week vs. eight beers per week) and, as such, does not alone present a security concern. However, the Individual's failure to list his July 1990 arrest for DWI in his August 1990 QSP raises significant security concerns. When I asked the Individual about his failure to list the DWI arrest he first stated "I didn't record it as a DWI because it [the arrest] was dismissed." Tr. at 107. When I implicitly pointed that it was unlikely that the charge was dismissed in such a short time the Individual replied "It's been a long time. I can't remember." Tr. at 107. The Individual subsequently admitted the possibility that he in fact deliberately lied on the 1990 QSP. Tr. at 108.

The falsification concerning the 1990 QSP did in fact occur a long time ago - over 16 years ago. If this were the only incident of failure to provide truthful information I might find that the concerns have been mitigated. However, I must also view this incident in light of the significant pattern of falsification involved with the 1994 traffic accident which lasted from 1994 to 2001. Given this extensive background of the Individual's failure to be candid and honest, I cannot find that the Individual has provided sufficient evidence to resolve the Criterion F concerns raised by the falsification of the 1990 QSP.

#### IV. CONCLUSION

As explained above, I find that the security concerns related to Criteria F, H, J, and L have not been resolved. I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: February 1, 2007